

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2010-0217-02E
For use by Office of Administrative Law (OAL) only			
		2010 FEB 17 PM 5:02 OFFICE OF ADMINISTRATIVE LAW	
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY <i>Department of Real Estate</i>			AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) SB 36 (Chapter 160, Statutes of 2009) - The SAFE Act		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT 2756, 2758.1, 2758.2, 2758.3, 2758.4, 2758.5, 2758.6, 2758.7, 2945.1, 2945.2, 2945.3, 2945.4	
TITLE(S) 10 (Chapter 6)		AMEND 2750, 2911	
3. TYPE OF FILING		REPEAL	
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) <input type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input checked="" type="checkbox"/> Effective other (Specify) February 26, 2010			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY <input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON Daniel Kehew, Real Estate Counsel	TELEPHONE NUMBER (916) 227-0425	FAX NUMBER (Optional) (916) 227-9458	E-MAIL ADDRESS (Optional) daniel_kehew@dre.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Barbara Bigby</i>	DATE 2/17/10
TYPED NAME AND TITLE OF SIGNATORY Barbara Bigby, Chief Deputy Commissioner, Department of Real Estate	

For use by Office of Administrative Law (OAL) only

THE REAL ESTATE COMMISSIONER
HEREBY ADOPTS THE FOLLOWING REGULATIONS
TO CHAPTER 6, TITLE 10, CALIFORNIA CODE OF REGULATIONS
EFFECTIVE: FEBRUARY 22, 2010

1. Article 7, Chapter 6, Title 10 of the California Code of Regulations is amended to read:

ARTICLE 7. SALESMEN-~~SALESPERSONS~~

2. Section 2750 is amended to read:

§ 2750. Minimum Age.

A real estate ~~salesman~~-salesperson license shall not be issued to a person who has not attained the age of 18 years.

NOTE: Authority cited: Section 10080, Business and Professions Code. Reference: Section 10017, Business and Professions Code.

3. Section 2756 is adopted to read:

§ 2756. Salesperson Performance of Mortgage Loan Origination

A salesperson must obtain and be maintaining a mortgage loan originator license endorsement and be employed by a licensed real estate broker who has obtained and is maintaining a mortgage loan originator license endorsement to perform acts for which a mortgage loan originator license endorsement is required.

NOTE: Authority cited: Sections 10080 and 10166.17, Business and Professions Code. Reference: Sections 10132, 10166.01(b), 10166.02, 10166.07(a), 10166.11(a) and (b), 10166.12(a), Business and Professions Code.

4. Article 7.5 is added to Chapter 6, Title 10 of the California Code of Regulations to read:

ARTICLE 7.5. MORTGAGE LOAN ORIGINATOR LICENSE ENDORSEMENT

5. Section 2758.1 is adopted to read:

§ 2758.1. Examination.

(a) The examination to qualify for a mortgage loan originator license endorsement shall be administered through the federal Nationwide Mortgage Licensing System and Registry and will consist of a national component and California state component. No portion of the examination is applicable, or a condition precedent, to the application required to obtain a real estate license in California.

(b) A person taking the examination to qualify for a mortgage loan originator license endorsement shall abide by the rules, policies, and procedures set forth by the Nationwide Mortgage Licensing System and Registry.

NOTE: Authority cited: Sections 10080 and 10166.17, Business and Professions Code.

Reference: Sections 10150(d), 10151(e), 10166.02(b)(2) and (d), and 10166.06, Business and Professions Code.

6. Section 2758.2 is adopted to read:

§ 2758.2. Fingerprints.

In order to apply for a mortgage loan originator license endorsement, an applicant must submit his or her fingerprints to the Nationwide Mortgage Licensing System and Registry. The submission of fingerprints shall be in addition to the fingerprint submission requirement to obtain a California real estate license.

NOTE: Authority cited: Section 10080 and 10166.17, Business and Professions Code.

Reference: Sections 10150(d), 10151(e), 10166.02(b)(2) and (d), and 10166.04(a)(1), Business and Professions Code.

7. Section 2758.3 is adopted to read:

§ 2758.3. Evidence of Financial Responsibility.

The Commissioner's finding required by Section 10166.05(c) of the Business and Professions

Code relates to any matter, personal or professional, that may impact upon an applicant's propensity to operate honestly, fairly, and efficiently when engaging in the fiduciary role of a mortgage loan originator.

In order to apply for a mortgage loan originator license endorsement, an applicant shall authorize the Nationwide Mortgage Licensing System and Registry to obtain the applicant's current credit report, at such time after this functionality is available on the System and Registry. The credit report will be used as needed to validate the applicant's responses to the electronic application form, in order to support the Commissioner's finding required by Section 10166.05(c) of the Business and Professions Code.

(a) The applicant may be precluded from obtaining a mortgage loan originator license endorsement where his or her personal history includes:

(1) any liens or judgments for fraud, misrepresentation, dishonest dealing, and/or mishandling of trust funds, or

(2) other liens, judgments, or financial or professional conditions that indicate a pattern of dishonesty on the part of the applicant.

(b) Notwithstanding the requirements above, where an applicant for a mortgage loan originator license endorsement (1) is currently holding a restricted real estate license, or (2) has a right to a restricted license and is making a dual application for the restricted license and mortgage loan originator license endorsement, such applicant must demonstrate, where pertinent, the completion of restitution to any person who has suffered monetary losses through acts or omissions of the applicant that include, but are not limited to, those that substantially related to the qualifications, functions or duties of a real estate licensee as defined in Section 2910 of these regulations, and/or the discharge of, or bona fide efforts toward discharging, adjudicated debts or monetary obligations to others.

NOTE: Authority cited: Section 10080 and 10166.17, Business and Professions Code.
Reference: Sections 10150(d), 10151(e), 10166.02(b)(2) and (d), 10166.04(a)(2), and 10166.05 (c),
Business and Professions Code.

8. Section 2758.4 is adopted to read:

§ 2758.4. Fees.

The fee to obtain and maintain a mortgage loan originator license endorsement will consist of
a processing fee charged by the Nationwide Mortgage Licensing System and Registry and an annual
license endorsement fee charged by the Department. The annual license endorsement fee is \$300.
Fees submitted to obtain a license endorsement are deemed earned upon receipt.

A licensee who applies for a mortgage loan originator license endorsement during 2010 will
pay a fee of \$300, which will be for the licensee's 2011 license endorsement. A licensee who makes
his or her original application for a license endorsement in 2011 or later will pay a fee of \$300 for the
year in which the licensee applies, except that a license endorsement application approved after
October 31 of a given year will be valid until December 31 of the following year.

A licensee who holds a mortgage loan originator license endorsement may apply to renew the
license endorsement in November and December for the following calendar year. The license
endorsement renewal application is entered via the Nationwide Mortgage Licensing System and
Registry, and the license endorsement fee for the renewal will be paid to the Nationwide Mortgage
Licensing System and Registry during the November/December processing period.

NOTE: Authority cited: Section 10080 and 10166.17, Business and Professions Code.
Reference: Sections 10166.17(b), Business and Professions Code.

9. Section 2758.5 is adopted to read:

§ 2758.5. Application, Electronic Signature, and License Changes.

(a) An application to obtain a mortgage loan originator license endorsement or to change

licensing information on an existing mortgage loan originator license endorsement must be filed using the procedures and electronic system maintained by the Nationwide Mortgage Licensing System and Registry. An applicant shall sign and attest to the information provided in the application through the electronic signature function of the system.

(b) A real estate licensee who has been issued a license endorsement is required to maintain the same current license information on file with the Department and with the Nationwide Mortgage Licensing System and Registry, including licensee name, licensee main office and mailing address. License information regarding a licensee's fictitious business names and branch office locations that used for mortgage loan origination activities must also be provided contemporaneously by the licensee to both the Department and Nationwide Mortgage Licensing System and Registry.

(c) Where a licensed real estate salesperson acts as a mortgage loan originator and holds a mortgage loan originator license endorsement, notice of employment or employment change for that salesperson that is required to be submitted to the Department under the provisions of the Real Estate Law and the Regulations of the Commissioner must also be filed electronically using the Nationwide Mortgage Licensing System and Registry.

(d) Brokers who employ broker associates to conduct mortgage loan originator activities must provide employment sponsorship information to the Nationwide Mortgage Licensing System and Registry within five (5) days of the commencement of employment. Termination of a broker/broker associate employment relationship must be reported to the Nationwide Mortgage Licensing System and Registry within five (5) days of the termination.

NOTE: Authority cited: Section 10080 and 10166.17, Business and Professions Code.

Reference: Sections 10150(d), 10151(e), Business and Professions Code.

10. Section 2758.6 is adopted to read:

§ 2758.6. Corporate Real Estate Brokers, Officers, Directors, and Shareholders.

The designated officer of a corporation who applies for or has been issued a mortgage loan originator license endorsement on behalf of the corporation is responsible for maintaining and updating, as needed, on the Nationwide Mortgage Licensing System and Registry, background information for the following individuals associated with the corporation:

(a) directors,

(b) officers,

(c) subordinate officers with the responsibility for forming policy of the corporation,

(d) all natural persons owning or controlling more than ten percent of the corporation's shares.

These directors, officers, subordinate officers, and owners/controlling persons are required by these regulations to provide personal information and background information as requested by the Nationwide Mortgage Licensing System and Registry. A broker officer who conducts mortgage loan originator activities on behalf of a corporate real estate licensee must hold an individual mortgage loan originator license endorsement.

NOTE: Authority cited: Sections 10080 and 10166.17, Business and Professions Code.

Reference: Sections 10150(d) and 10151(e), Business and Professions Code.

11. Section 2758.7 is adopted to read:

§ 2758.7. Renewal and Continuing Education.

(a) After January 1, 2011, the term for a mortgage loan originator license endorsement shall expire on December 31 of the year for which the license endorsement is issued, except that license endorsement applications approved after October 31 of a given year will be valid until December 31 of the following year.

(b) The renewal requirements for a mortgage loan originator license endorsement, including a renewal request and evidence of completion of required continuing education courses that have been completed in the same calendar year, must be filed and all applicable fees paid between November 1

and December 31 through the Nationwide Mortgage Licensing System and Registry.

(c) A licensee who fails to file the necessary requirements to renew a mortgage loan originator license endorsement by December 31 may request reinstatement of the expired license endorsement by filing the appropriate renewal and other applicable minimum application requirements before March 1 of the following year. Notwithstanding Section 10166.10(f), continuing education completed between January 1 and March 1, while a license endorsement is expired and for the purpose of meeting the requirements to reinstate the expired license endorsement, will be credited to, and only be credited to, the renewal period of the previous year. If the renewal requirements are not filed by March 1, the licensee must apply for a new mortgage loan originator license endorsement and meet the requirements for a license endorsement at that time.

NOTE: Authority cited: Sections 10080 and 10166.17, Business and Professions Code.

Reference: Sections 10150(d), 10151(e), 10166.10, and 10166.17(c), Business and Professions Code.

12. Section 2911 is amended to read:

ARTICLE 18.5. SUBSTANTIAL RELATIONSHIP AND REHABILITATION CRITERIA

...

§ 2911 Criteria of Rehabilitation (Denial)

...

(o) Each of the above criteria notwithstanding, no mortgage loan originator license endorsement will be issued to an applicant for such license endorsement where the applicant has been convicted of any felony within seven (7) years from the date of his or her application for a license endorsement. This ban is not subject to mitigation or rehabilitation.

(p) Each of the above criteria notwithstanding, no mortgage loan originator license

endorsement will be issued to an applicant for such license endorsement where the applicant has ever been convicted of a felony where such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. This ban is not subject to mitigation or rehabilitation.

NOTE: Authority cited: Sections 10080 and 10166.17, Business and Professions Code.

Reference: Section 10166.05(b), Business and Professions Code.

13. Article 18.9 is added to Chapter 6, Title 10 of the California Code of Regulations to read:

ARTICLE 18.9. DISCIPLINE REGARDING MORTGAGE LOAN ORIGINATOR LICENSE

ENDORSEMENT

14. Section 2945.1 is adopted to read:

§ 2945.1 Effect of License Discipline on Mortgage Loan Originator License Endorsement

Real estate license discipline, including a revocation, a suspension, a voluntary surrender of a real estate license, a public reproof, and/or a bar order, may be cause for the revocation and/or suspension of the real estate licensee's mortgage loan originator license endorsement. The disciplinary action on an existing license endorsement may be imposed via the same process and within the same order as the license discipline.

NOTE: Authority cited: Sections 10080 and 10166.17, Business and Professions Code.

Reference: Sections 10150(d), 10151(e), and 10166.05(a), Business and Professions Code.

15. Section 2945.2 is adopted to read:

§ 2945.2 Effect of Prior License Discipline on Mortgage Loan Originator License Endorsement

Application

(a) Where a real estate licensee was subject to a real estate license discipline action filed by the Department prior to January 1, 2010, resulting in discipline in the form of a revocation and/or suspension, such discipline in itself shall not be the sole basis to deny the issuance of a mortgage

loan originator license endorsement.

(b) Where a real estate licensee was subject to a real estate license discipline action filed by the Department on January 1, 2010, or later, resulting in a revocation, a suspension, a voluntary surrender of a real estate license, a public reproof, and/or a bar order, such discipline alone may be cause for denial of a subsequent mortgage loan originator license endorsement.

(c) A disciplinary action resulting in the revocation of a real estate license with an immediate right to a restricted real estate license shall not constitute a revocation for purposes of invoking a lifetime ban from holding a mortgage loan originator license endorsement.

NOTE: Authority cited: Sections 10080 and 10166.17, Business and Professions Code.
Reference: Sections 10150(d), 10151(e), and 10166.05(a), Business and Professions Code.

16. Section 2945.3 is adopted to read:

§ 2945.3 Effect of Prior Felony Conviction on Mortgage Loan Originator License Endorsement Application

A conviction for any felony within seven (7) years of a real estate licensee's application for a mortgage loan originator license endorsement is cause for denial of the application. A felony conviction at any time in the applicant's personal history where such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering is cause for denial of the application. These restrictions constitute a ban on the real estate licensee's ability to apply for a license endorsement. These restrictions are not subject to mitigation or rehabilitation.

NOTE: Authority cited: Sections 10080 and 10166.17, Business and Professions Code.
Reference: Sections 10150(d), 10151(e), and 10166.05(b), Business and Professions Code.

17. Section 2945.4 is adopted to read:

§ 2945.4 Disciplinary Process Uniformity: Real Estate License and Mortgage Loan Originator License Endorsement

The Department will apply parallel standards and process to mortgage loan originator license endorsements as the Real Estate Law and Regulations of the Real Estate Commissioner apply to real estate licenses with regard to disciplinary procedure, voluntary surrender of license, statute of limitations, and jurisdiction over lapsed and suspended licenses.

NOTE: Authority cited: Sections 10080 and 10166.17, Business and Professions Code. Reference: Sections 10100, 10100.2, 10101, 10103, 10150(d), 10151(e), and 10166.17(d), Business and Professions Code.

TITLE 10. CALIFORNIA DEPARTMENT OF REAL ESTATE FINDING OF EMERGENCY

Pursuant to Government Code Section 11346.1, the Real Estate Commissioner ("Commissioner") hereby amends Title 10, Chapter 6, of the California Code of Regulations to adopt rules pursuant to the passage of SB 36 (Calderon, Ch. 160, Stats. 2009). This emergency regulatory action clarifies the application of Business and Professions Code Sections 10150, 10151, and 10166.01 through 10166.17. The Commissioner amends Article 7 (the article's Title, amendment of Section 2750, adoption of Section 2756), adopts Article 7.5 (Sections 2758.1, 2758.2, 2758.3, 2758.4, 2758.5, 2758.6, and 2758.7), amends Article 18.5, Section 2911, and adopts Article 18.9 (Sections 2945.1, 2945.2, 2945.3, and 2945.4) to Chapter 6, Title 10 of the California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The national Secure and Fair Enforcement of Mortgage Licensing (SAFE) Act of 2008 (Title V of P.L. 110-289), requires all states to license and register their mortgage loan originators, as defined in the Act, through a nationwide organization called the Nationwide Mortgage Licensing System and Registry (NMLSR). The Legislature and the Governor, with support from the real estate industry, enacted SB 36 (Calderon, Ch. 160, Stats. 2009) to comply with the national SAFE Act.

Under California law, licensed real estate salespersons and licensed real estate brokers were empowered to engage in activities that are defined in the SAFE Act as mortgage loan origination. Real estate licenses may be issued to individuals or to corporations. SB 36 requires these already-licensed individuals and corporations to obtain special mortgage loan originator license endorsements in order to continue engaging in mortgage loan origination.

SB 36 defines the term "mortgage loan originator" as (generally) one who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or gain. Administrative and/or clerical employees are not included within the definition, nor are real estate brokers who do not broker mortgages.

Under SB 36, licensed real estate salespersons and brokers who wish to continue engaging in mortgage loan origination activities must undergo brand new background checks and take different education classes in order to satisfy the SAFE Act mortgage loan originator licensing requirements. They will also have to continue to meet the SAFE Act's personal character requirements on an annual basis, in order to remain eligible to retain their license endorsements. Corporations engaged in mortgage loan origination will have to register with NMLSR and obtain license endorsement for their company. Corporations licensed under the Real Estate Law will also have to ensure that each of their mortgage loan originator employees obtains an individual mortgage loan originator license endorsement. The testing and registration of applicants for license endorsements will be done via the NMLSR's online system.

The proposed regulations include the adoption of two new articles, encompassing eleven (11) new regulatory sections, and the amendment of two existing articles (the addition of a single new section and minor, non-substantive changes within

one existing article, and amending an existing section within the second existing article).

ARTICLE 7

The Commissioner proposes to amend Article 7 of Chapter 6, Title 10 of the California Code of Regulations, entitled "Salesmen." Within Article 7 the Commissioner proposes to make two non-substantive changes (updating language), and to adoption of one section.

Within Article 7, the Commissioner proposes to adopt Section 2756, entitled, "Salesperson Performance of Mortgage Loan Origination." *Purpose:* Specifies that salespersons must both hold a mortgage loan originator license endorsement and be employed by a broker who also holds a license endorsement in order for the salesperson to perform mortgage loan origination acts. *Rationale:* Although the statutes adopted via SB 36 address this subject repeatedly, and the underlying real estate licensing scheme makes a parallel requirement for general real estate activities, the standard described by this proposed section is not expressly stated in statute. The standard is necessary to ensure compliance of both brokers with license endorsements and salespersons with license endorsements, particularly with regard to reporting requirements of the new statutes.

ARTICLE 7.5

The Commissioner proposes to adopt Article 7.5 to Chapter 6 of Title 10 of the California Code of Regulations, entitled "Mortgage Loan Originator License Endorsement." Within Article 7.5 the Commissioner proposes to adopt seven sections.

Section 2758.1, entitled, "Examination." *Purpose:* Specifies that examinations to demonstrate qualification for the mortgage loan originator license endorsement will be administered through the NMLSR system. The exam will include a national component and a California-specific component. The regulation requires an applicant's compliance with NMLSR standards and process. *Rationale:* Addresses potential confusion based upon the difference between examinations already in place for real estate licenses in California and the new license endorsement requirements.

Section 2758.2, entitled, "Fingerprints." *Purpose:* Requires an applicant for a mortgage loan originator license endorsement to submit his or her fingerprints to the NMLSR. The section specifies that the requirement is in addition to the fingerprint submission already required of real estate license applicants. *Rationale:* Avoids potential confusion regarding whether the set of fingerprints already on file with the Department is sufficient to meet the license endorsement application; another set of fingerprints is necessary.

Section 2758.3, entitled, "Evidence of Financial Responsibility." *Purpose:* Requires an applicant to authorize the NMLSR to obtain the applicant's credit report. The section also sets out criteria shown by a credit report and other financial background that may be used to disqualify an applicant. *Rationale:* Alerts applicants to SAFE Act conditions regarding an applicant's financial disclosures and background. These financial criteria are being further defined at the national level, and greater

definition within this section is expected in the future as national standards are clarified.

Section 2758.4, entitled, "Fees." *Purpose:* Specifies that the annual fee assessed for a mortgage loan originator license endorsement will be \$300. Special consideration is given for the transitional 2010 period, specifying the fee paid for 2010 to cover calendar year 2011. Fee payment during the annual renewal period in November and December is also specified. *Rationale:* Establishes the fee structure for license endorsements.

Section 2758.5, entitled, "Application, Electronic Signature, and License Changes." *Purpose:* Requires an applicant to file for his or her mortgage loan originator license endorsement via the NMLSR's electronic system. The section also requires that the applicant keep consistent the information provided to the NMLSR regarding their license endorsement and the information provided the Department regarding their real estate license. *Rationale:* Clarifies that a licensee's information may not differ as between their real estate license and license endorsement, despite the distinction between the national system and state system.

Section 2758.6, entitled, "Corporate Real Estate Brokers, Officers, Directors, and Shareholders." *Purpose:* Specifies the responsibility of the designated officer of a licensee corporation for the maintaining and updating the corporation's required information in the NMLSR database. *Rationale:* Establishes responsibility with an individual, natural licensee where a corporate licensee acts with regard to its license endorsement information.

Section 2758.7, entitled, "Renewal and Continuing Education." *Purpose:* Specifies the calendar timing applicable to mortgage loan originator license endorsements, late renewals of license endorsements, as well as the limited applicability of continuing education credits attained to qualify for a late renewal. *Rationale:* Addresses potential confusion based upon the difference between renewal of real estate licenses already in place and the new license endorsement requirements.

ARTICLE 18.5

Within the existing Article 18.5, Section 2911 currently outlines the criteria for evaluating the rehabilitation of an applicant for issuance or for reinstatement of a license in considering whether or not to deny the issuance or reinstatement on account of a crime or act committed by the applicant. The proposed amendment would add subsections (o) and (p) to this section. *Purpose:* Subsection (o) specifies that no license endorsement will be issued regardless of rehabilitation where the applicant has been convicted of a felony within seven (7) years from the date of his or her application for a license endorsement. Subsection (p) specifies that no license endorsement will be issued regardless of rehabilitation where the applicant has been convicted of a felony where such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. *Rationale:* Clarifies the more stringent limitations of the SAFE Act on the Department's authority to consider rehabilitation from felony criminal offenses when assessing applications for mortgage loan originator license endorsements.

ARTICLE 18.9

The Commissioner proposes to adopt Article 18.9 to Chapter 6 of Title 10 of the California Code of Regulations, entitled "Discipline Regarding Mortgage Loan Originator License Endorsement." Within Article 18.9 the Commissioner proposes to adopt four sections.

Section 2945.1, entitled, "Effect of License Discipline on Mortgage Loan Originator License Endorsement." *Purpose:* Specifies that discipline to a licensee's real estate license is basis for discipline to the licensee's license endorsement, and that the discipline to the license and license endorsement may be unified into a single action. *Rationale:* The relationship between a real estate license and a license endorsement, for disciplinary purposes, has not previously been addressed in statute or regulation. This section connects the discipline of the two levels of license, and establishes a baseline for efficient handling of a cause of action against an individual licensee with both a real estate license and license endorsement.

Section 2945.2, entitled, "Effect of Prior License Discipline on Mortgage Loan Originator License Endorsement Application," *Purpose:* Establishes prior license discipline as a basis for denial of a mortgage loan originator license endorsement. The section also limits this restriction, as specified, where discipline was imposed upon a real estate license prior to 2010, and where discipline takes a lesser form than outright revocation with no right to a restricted license. *Rationale:* Establishes the relationship between past real estate license discipline and a license endorsement application. The restrictions outlined address the new, and more restrictive, language of the SAFE Act and how similar wording—and specifically the word, "revoked"—has been used in a different sense by existing practice under the Real Estate Law. The SAFE Act imposes a lifetime bar against a person whose license endorsement has been revoked. The Commissioner recognizes that, under one interpretation, revocation of a real estate license may be considered equivalent to revocation of a mortgage loan originator license endorsement. The Commissioner believes this interpretation goes beyond the meaning of the SAFE Act, because real estate license discipline includes a range of actions, of which the most serious (save for a bar order, a relatively recent addition to the Commissioner's statutory power) is outright revocation. Lower on the range of discipline is revocation with a right to a restricted license. This discipline is applied in a situation where the Commissioner has determined that it would not be against the public interest for the licensee to continue practicing in real estate. Although the revocation with right to a restricted license includes the revocation of a licensee's license and license rights, the Commissioner does not believe this measure is the sort of discipline anticipated where the SAFE Act imposes an outright bar from mortgage origination. The restrictions on license endorsement discipline imposed here describe that distinction.

Section 2945.3, entitled, "Effect of Prior Felony Conviction on Mortgage Loan Originator License Endorsement Application." *Purpose:* Describes the impact of an applicant or licensee felony conviction on a license endorsement. *Rationale:* Addresses potential confusion based upon the difference between the impacts of a felony already in place within the Real Estate Law for real estate licenses and the new, more stringent, license endorsement requirements.

Section 2945.4, entitled, "Disciplinary Process Uniformity: Real Estate License and Mortgage Loan Originator License Endorsement." *Purpose:* Clarifies that the disciplinary process standards and procedures currently applied to real estate licenses will be uniformly applied to mortgage loan originator license endorsements, as well. *Rationale:* The disciplinary standards and practices relating to real estate licenses are founded in statutory authorizations and limitations, primarily based in Sections 10100, 10100.2, 10101, and 10103 of the Business and Professions Code. Although the statutes resulting from SB 36 appear to be silent with regard to the disciplinary process to be applied to mortgage loan originator license endorsements, the Commissioner interprets the language and tone of SB 36 as indicative that license endorsements are viewed as a subsidiary form of license by the Legislature, falling within the existing discipline process. In order clarify that uniformity of process will be applied between the existing disciplinary practice regarding real estate licenses and the new mortgage loan originator license endorsement, in this regulatory section the Department states that existing real estate license practice will be applied, both in its authorizations and limitations, to mortgage loan originator license endorsements.

AUTHORITY

Sections 10080 and 10166.17, Business and Professions Code.

REFERENCE

Sections 10150, 10151, and 10166.01 et seq., Business and Professions Code.

FINDING OF EMERGENCY

The Real Estate Commissioner hereby finds that these emergency regulations are necessary for the immediate preservation of the public peace, health and safety, or general welfare. The current economic downturn, now a global event, is based in part on a mortgage loan crisis.

The federal SAFE Act and California's SB 36 were designed to urgently address one aspect of that underlying issue: Insufficient training and license screening of professionals in the mortgage loan origination market. This particular issue is illustrated in the objectives set forth in Section 1502 of the SAFE Act:

"In order to increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud, the States, through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, are hereby encouraged to establish a Nationwide Mortgage Licensing System and Registry for the residential mortgage industry that accomplishes all of the following objectives:

- (1) Provides uniform license applications and reporting requirements for State-licensed loan originators.*
- (2) Provides a comprehensive licensing and supervisory database.*
- (3) Aggregates and improves the flow of information to and between regulators.*
- (4) Provides increased accountability and tracking of loan originators.*
- (5) Streamlines the licensing process and reduces the regulatory*

burden.

(6) Enhances consumer protections and supports anti-fraud measures.

(7) Provides consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.

(8) Establishes a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer.

(9) Facilitates responsible behavior in the subprime mortgage market place and provides comprehensive training and examination requirements related to subprime mortgage lending.

(10) Facilitates the collection and disbursement of consumer complaints on behalf of State and Federal mortgage regulators.”

Of greatest note for the purposes of this Finding are objectives 4, 6, 7, 8, 9, and 10. These objectives highlight the risks presented to consumers on an everyday basis by mortgage loan originators who do not meet the standards of the SAFE Act.

Certainly, California’s current licensing criteria under the Departments of Real Estate and Corporations provide significantly greater protections than those previously found in many states. This has not prevented California’s public from shouldering a disproportionate impact from the mortgage loan crisis, and that disproportionate impact is predicted to continue.

The Department’s overall response to the crisis just described provides more data to support the finding of emergency. The Department revoked a record number of real estate licenses for cause in 2009. The Department also accepted another record number of license surrenders from licensees facing disciplinary action. All told, over 775 licensees had their license revoked or simply surrendered their licenses while facing accusations. Over the past two fiscal years, the DRE averaged 446 license revocations and 59 license surrenders. In 2009, license revocations jumped over 50%, to 672, while license surrenders jumped nearly 80% to 105. The 122 cases that resulted in license suspensions in 2009 remained relatively unchanged from the 125 license suspensions averaged in the past two fiscal years.

Yet the SAFE Act’s new standards differ from, and exceed, the current California standards in several ways. The SAFE Act standards are a congressional statement that even California’s high standards did not go far enough, and still do not go far enough, to protect the public in this critical and influential market. The SAFE Act’s objectives, *coupled with its demanding timeline for implementation*, thus express the program’s intent to provide rapid support to California consumers directly. Indirectly, this program provides critical support the wellbeing of the national and global economies. That continuing economic disaster is the basis of the Commissioner’s finding of an emergency.

In fact, the risk presented (most immediately to California borrowers) is increasing in the present economic environment. Many factors are compounding the challenges to current borrowers and increasing the immediate need for adequately screened mortgage loan professionals. Unemployment in California continues to rise. Those consumers who once qualified for loans under subprime standards now face limitations on available credit. Housing values plummeted in the last two years, leaving

many homeowners owing more than their property is worth. Foreclosures, short sales, and REO problems continue to plague economic recovery.

These facts are supported and highlighted in an article published on February 16, 2009, in the *Los Angeles Times*.¹ While outlining the likelihood of another significant wave of foreclosures nationally by the end of 2010, the article includes this blunt statistical indicator of the financial and housing crisis facing California: "As of December, 11.4% of California homeowners were 90 days or more late on their loans, according to First American CoreLogic, a Santa Ana real estate data firm. That compares with a delinquency rate of 8.4% nationwide." (These figures are backed up by data reported in another article published in the *Los Angeles Times* on the same day.²) Elsewhere in the same article, a housing economist predicts that 2.4 million homeowners nationwide may lose their homes to foreclosure before the end of 2010, an increase from 2.1 million foreclosures or short sales in 2009, and a figure five times the annual average less than a decade ago.

These millions of consumers facing a life-changing catastrophe such as foreclosure likely placed their trust in a professional mortgage loan originator when entering the mortgage that is now at risk. They now need further reason to place trust in a mortgage loan originator again, at a time when their financial straits make them vulnerable to exploitation. The SAFE Act is the sole means available to the Department to ensure the consumers of California that each and every licensed and endorsed mortgage loan originator – including those that were engaged in and survived the market that created this emergency – will face an up-to-date screening and background check, as well as current-year continuing education in their professional, fiduciary responsibilities to their clients. Focusing on the demanding timeline referenced above, the Commissioner is also acting as rapidly as possible on these regulations to continue to demonstrate the State of California's good faith effort to (1) establish a licensing system to the standard of the SAFE Act and (2) transition as rapidly as possible onto the NMLSR. Good faith effort on both standards is needed to comply with the requirements of the SAFE Act.

As passed on July 30, 2008, Section 1508 of the SAFE Act gave states such as California one year to "...have in place by law or regulation..." requirements that meet the Act's standards for licensure of mortgage loan originators. The Act also compels, by the same timeline, participation of state agencies such as the Department on the NMLSR, as described above. The alternative to the Department's timely participation is a takeover of mortgage loan originator licensing by the U.S. Department of Housing and Urban Development (HUD). In fact, the hard deadline for the Department of Real Estate to comply, as found in Section 1508 of the federal SAFE Act, had already passed before SB 36 was enacted. Nevertheless, Section 1508 also empowers the Secretary of HUD to extend the deadline, *"...if the Secretary determines that such State is making a good faith effort to establish a State licensing law that meets such requirements, license mortgage originators under such law, and register such originators with the Nationwide Mortgage Licensing System and Registry."* Since the passage of the SAFE Act, the Legislature, the Governor, and the Departments of Real Estate and Corporations have been engaged with HUD and the NMLSR to fully establish the

¹ "New Wave of Foreclosures by End of 2010 is Feared," by Jim Puzzanghera and Don Lee, *Los Angeles Times*, published February 16, 2010.

² "TransUnion: Surprising Increase in Souring Mortgages," by E. Scott Reckard, *Los Angeles Times*, published February 16, 2010.

state's mortgage loan origination licensing program as quickly as possible. This emergency regulatory action continues that effort.

In this regard, this finding of emergency is supported by the case of Schenley Affiliated Brands Corp. v. Kirby, 21 Cal. App. 3d 177 (1971). Within the Schenley decision, the court deferred to the agency's determination that an impending deadline constituted an emergency under the Administrative Procedure Act. In the present circumstance, the Commissioner is under an ongoing deadline to act as quickly as possible and actively demonstrate in good faith in doing so. Again, failure to employ every alternative that speeds Departmental implementation of the SAFE Act puts the state's real estate licensing program at risk of federalization. Such a result is opposed by the Administration, the Legislature, the California real estate industry, and the Commissioner. Such a result would likely delay the benefit of the SAFE Act to California consumers, at a time when the damages caused by such a delay are proven to have catastrophic ripple effects through the global economy.

The Commissioner finds: *This is an emergency.*

The Commissioner also remains under the duties imposed by the Administrative Procedure Act regarding regulations, and is mindful of the benefits of rapid public input on regulatory development. Concurrent with the submission of these emergency regulations, the Department also submitted the same regulatory language for permanent adoption. Publication took place on February 12, 2010. This ensures that these emergency regulations will be active for the shortest possible period of time.

LOCAL MANDATE

These regulations do not impose a mandate on local agencies or school districts.

FISCAL IMPACT

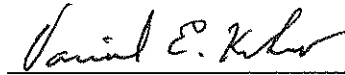
- Cost or savings to any state agency: DRE has determined by workload analysis that the cost to implement the provisions of SB 36 and the SAFE Act will be approximately \$300 per licensee. The Department recently revised its SB 36 Budget Change Proposal to add 27 PYs in Budget Year 10/11 plus budget augmentation to pay start up fees to the NMLSR (\$500,000). Once the Department is able to document workload associated with the Enforcement, Legal, and Audit requirements to comply with SB 36 and the SAFE Act, it is highly likely that additional PYs will be needed in to address anticipated Enforcement workload associated with the implementation of the SAFE Act.
- Direct or indirect costs or savings in federal funding to the state: none.
- Cost to local agencies and school districts required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: none.
- Other nondiscretionary costs/savings imposed on local agencies: none.
- Costs to private persons or businesses directly affected: The Department has determined that the cost to directly affected persons and corporations that apply for or renew a mortgage loan originator license endorsement under these regulations will be \$300 per year.

CONTACT PERSON

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Real Estate, Legal Section, P.O. Box 187007, Sacramento, California, 95818-7007.
Comments may also be sent via electronic mail at DRERegulations@dre.ca.gov or
faxed to (916) 227-9458.

Dated: February 17, 2010
Sacramento, California



Daniel E. Kehew
Real Estate Counsel